

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STACY NESBY,

No. C 05-3555 JL

Plaintiff,

PRETRIAL ORDER

v.

THE CITY OF OAKLAND, ET AL.,

Defendants.

Pursuant to Fed. R. Civ. P. 16 and Civ. L.R. 16-10(b), the following case management and pretrial order is entered:

1. TRIAL DATE

- a. Jury trial will begin on February 20, 2007 at 9:30 a.m. in Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102.
- b. The length of the trial will be not more than 5 days.

2. DISCOVERY

- a. Experts shall be disclosed by July 28, 2006.
- b. All discovery from experts shall be completed by September 15, 2006.
- c. All non-expert discovery shall be completed by July 28, 2006.
- d. In the event of a discovery dispute the parties shall use the following procedure:

Parties shall meet and confer in person, or, if counsel are located outside the Bay Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of letters, telephone calls, or facsimile transmissions does not satisfy the requirement to meet and confer.

If, after a good faith effort, the parties have not resolved their dispute, they shall prepare a concise joint statement, of less than five pages, without affidavits or exhibits, stating the nature and status of their dispute. If a joint statement is not possible, each side may submit a two page individual statement. The Court will advise the parties regarding the need, if any, for formal briefing or a hearing.

3. MOTIONS

All dispositive motions shall be served and filed not less than **thirty-five (35)** days prior to the scheduled hearing date. Any opposition shall be served and filed no later than **twenty-one (21)** days prior to the hearing date. Any reply to the opposition shall be served and filed no later than **fourteen (14)** days prior to the hearing. Prior to a dispositive motion, the parties shall meet and confer and, at the time the motion is filed, submit a joint statement of undisputed facts.

4. ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Court hereby refers this case for the following:

- a. A settlement conference to be scheduled before Magistrate Judge Edward M. Chen. Counsel will be contacted by Judge Chen's chambers with a date and time for the conference as soon as is convenient to the judge's calendar.

5. A further Case Management Conference will be held August 16, 2006 at 10:30 a.m.

6. PRETRIAL CONFERENCE

- a. A final pretrial conference shall be held on January 31, 2007 at 11:00 a.m., in Courtroom F, 15th Floor. Each party shall attend personally or by counsel who will try the case.

b. **Not less than thirty (30) days** prior to the date of the pretrial conference, all counsel or parties shall meet and fulfill the requirements of Civil Local Rule 16-10(b).

c. **Not less than twenty (20) days** prior to the pretrial conference, counsel or parties shall

- (l) serve and file a joint pretrial statement pursuant to Local Rule 16-10 (b);

The pretrial statement shall include the disclosures required by Fed. R. Civ. P. 26(a)(3) as well as the following:

THE ACTION

Substance of the Action

Relief Prayed

FACTUAL BASIS FOR THE ACTION

Undisputed Facts

Disputed Factual Issues

Agreed Statement

Stipulations

DISPUTED LEGAL ISSUES

(List)

TRIAL PREPARATION

Witnesses to be Called

Exhibits, Schedules and Summaries;

Trial

Estimate of Trial Time

Use of Discovery Responses at Trial

Further Discovery or Motions

TRIAL ALTERNATIVES AND OPTIONS

Settlement Discussions

Amendments - Dismissals

Bifurcation, Separate Trial of Issues

MISCELLANEOUS

Any other concerns of the parties

d. At the same time that the parties file their joint pretrial statement they shall also:

(ii) Serve and file trial briefs, which shall specify each cause of action and defense remaining to be tried along with a statement of the applicable legal standard (no opposition shall be filed);

(iii) Serve and file motions *in limine*, which shall be contained in one document. Motions in limine will be decided at the Pretrial Conference.

e. Serve and file a list of excerpts from discovery that will be offered at trial, specifying the witness, page and line references and whether the excerpt is to be offered in lieu of testimony or as impeachment;

f. Serve and file a list of witnesses likely to be called at trial, in person or by deposition, other than solely for impeachment or rebuttal, with a brief statement describing the substance of the testimony to be given;

g. Serve and file a numerical list of exhibits (including demonstrative exhibits that may be admitted into evidence but not those that are purely illustrative), with a brief statement describing the substance and purpose of each exhibit and the name of the sponsoring witness;

h. Exchange exhibits which shall be premarked, tabbed and in binders (plaintiff shall use numbers and defendant shall use letters); and deliver the original and **two** duplicate sets of all premarked exhibits to chambers (exhibits are not to be filed) at least one week before trial.

(See Label)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. _____

Exhibit No. _____

Date entered: _____

RICHARD W. WIEKING, Clerk

By: _____

Deputy Clerk

j. Serve and file proposed joint voir dire questions and joint jury instructions for cases to be tried by jury (further instructions regarding jury instructions below);

k. Serve and file proposed findings of fact and conclusions of law for cases to be tried by the Court.

l. Serve and file a proposed verdict form which contains no reference to submitting party.

m. **Two courtesy copies** of trial briefs and motions in limine shall be provided.

n. No party shall be permitted to call any witness or offer any exhibit in its case in chief that is not disclosed in these pretrial filings without leave of court and for good cause.

7. **Not less than nine calendar days** prior to the pretrial conference, counsel or parties shall serve and file any opposition or objection to those items required by section 3 (e), (f), (i),(j), (k) and (l) of this order. Additionally, counsel or parties shall file any objections to the qualifications of expert witnesses contained in the opposing party's

1 witness list. Objections not filed as required will be deemed waived. No replies shall be
2 filed. All motions and objections shall be heard at the pretrial conference unless otherwise
3 ordered.

4 8. JURY TRIAL

5 a. Counsel shall submit an **agreed upon set** of additional voir dire
6 questions to be posed by the Court. Any voir dire questions on which counsel cannot
7 agree may be submitted separately. Counsel will be allowed brief follow-up voir dire after
8 the Court's questioning.

9 b. The following jury instructions from the Manual of Model Civil Jury
10 Instructions for the Ninth Circuit (2002 Edition as modified 2003) will be given absent
11 objection: 1.1 - 1.12, 2.1 - 2.6, 3.1 - 3.3, 3.5 - 3.8, 4.1 - 4.6. The Ninth Circuit Manual of
12 Model Civil Jury Instructions is available on the web site for the U.S. District Court for the
13 Northern District of California at www.cand.uscourts.gov. Click on the 9th Circuit home
14 page button at the lower left of the first screen and then choose the Manual of Model Civil
15 Jury Instructions from the list on the right hand side of the next screen. Counsel shall also
16 submit an agreed upon set of case specific instructions, using the Ninth Circuit Manual of
17 Model Civil Jury Instructions where appropriate. Do not submit duplicates of those listed
18 above. Any instructions to which counsel cannot agree may be submitted separately.
19 Each requested instruction shall be typed in full on a separate page with citations to the
20 authority upon which it is based and a reference to the party submitting it. A **second blind**
21 **copy** of each instruction and verdict form shall also be submitted omitting the citation to
22 authority and the reference to the submitting party.

23 9. All documents filed with the Clerk of the Court shall list the civil case number
24 followed by the initials "JL." One copy shall be clearly marked as a **chambers** copy.

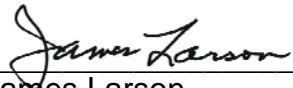
25 10. Within two weeks of the issuance of this order, counsel for Plaintiff shall
26 submit to the Court an order dismissing Defendant Officers Williams and Wayne.
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United States District Court
For the Northern District of California

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IT IS SO ORDERED.

DATED: May 22, 2006



James Larson
Chief Magistrate Judge